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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91210863
Party	Plaintiff Chris Economides III
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the matter of trademark application for the mark
“GOT OUZO”**

Published in the Official Gazette on January 29, 2013

Chris Economides III

v

Thanco Products and Imports, Inc.

AMENDED NOTICE OF OPPOSITION

**Chris Economides III
3953 Avera Avenue
Winston-Salem, NC 27106**

The above-identified opposer, Chris Economides, III believes that he will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same. Opposer is the sole owner of Apollo Graphics and Marketing, a seller of shirts and other items to Greek festivals. Apollo Graphics and Marketing is an entity belonging solely to the opposer and is not a corporation or separate entity. Applicant is a direct competitor of opposer and both have the same potential and/or actual customer base and clients. Opposer, consequently, has a direct personal stake in these proceedings. Opposer has sold items with the mark as applied for GOT OUZO? and has received a threatening letter from applicant regarding the mark as applied for in this matter concerning sales of items with this mark. If applicant were to obtain registration opposer would be damaged. Further, opposer, through his company Apollo Graphics and

Marketing, has a long history of opposing the mark GOT OUZO? and has had previous involvement with the United States Trademark and Patent Office. Opposer, through his business entity, filed a cancellation proceeding against the registered mark GOT OUZO?, registration number 3246800. This was cancellation number 92053525 and was terminated after the resolution of the civil matter in Federal Court concerning that registration. It was directly as a result of this cancellation proceeding that applicant sent their letter to opposer. This letter was addressed to the opposer in the name of his business entity. A further review of that proceeding will confirm that the entity Apollo Graphics and Marketing was never listed as a corporation. The labeling of this entity as a corporation by the applicant was merely a ploy attempting to dilute standing of opposer.

The grounds for opposition are as follows below:

By /Chris Economides III/
Chris Economides III

November 22, 2013

GROUNDS FOR OPPOSITION

1. Failure to Prove Secondary Meaning

The courts have clearly, and repeatedly, established that the entire burden of proof for showing secondary meaning lies on the plaintiff. Thanco Products and Imports, Inc. has failed to meet this burden of proof.

In *YAMAHA INTERNATIONAL CORPORATION, Appellant, v. HOSHINO GAKKI CO., LTD., assignee of Hoshino Gakki Ten Inc., Appellee*. No. 87-1128. United States Court of Appeals, Federal Circuit. 1988(840 F.2d 1572 56 USLW 2540, 6 U.S.P.Q.2d 1001)the court states that:

"The burden of proving secondary meaning is on the party asserting it, whether he is the plaintiff in an infringement action or the applicant for federal trademark registration." 1 Gilson, *Trademark Protection and Practice* Sec. 2.09, at 2-72 (1987). As one of our predecessor courts stated in *In re Hollywood Brands, Inc.*, 214 F.2d 139, 140, 102 USPQ 294, 295, 41 CCPA 1001 (1954), when reviewing the refusal of a registration sought under Section 2(f), "[t]here is no doubt that Congress intended that the burden of proof [under Section 2(f)] should rest upon the applicant for registration." See also *Roselux Chemical Co. v. Parsons Ammonia Co.*, 299 F.2d 855, 862, 132 USPQ 627, 633-34, 49 CCPA 931 (1962) (burden on applicant to show descriptive word has acquired meaning indicative of origin of goods); 1 J. McCarthy, *Trademarks and Unfair Competition* Sec. 15:11A at 686 (2d ed. 1984) ("[t]he burden of proof of secondary meaning is upon the party trying to establish legal protection for the mark"); McCormick, *Evidence* Sec. 336 at 947 (Cleary 3d ed. 1984) (the party asserting a fact has the obligation to establish that fact). As this court observed while reviewing an opposition proceeding in *Levi Strauss & Co. v. Genesco, Inc.*, 742 F.2d 1401, 1405, 222 USPQ 939, 942 (Fed.Cir.1984), the "one seeking to register [the proposed trademark] bears the burden of showing secondary meaning under Section 2(f)."

The courts stated more clearly that "Moreover, it is the party seeking protection of a mark who bears the burden of proving that secondary meaning has attached." *Bristol-Myers Squibb Co. v. McNeil-P.P.C., Inc.*, 973 F.2d 1033, 1041 (2d Cir.1992); *Blinded Veterans Assoc.*, 872 F.2d at 1041.

This threshold is also clearly qualified. "The burden of proof to establish secondary meaning rests at all times with the plaintiff; this burden is not an easy one to satisfy, for '[a] high degree of proof is necessary to establish secondary meaning for a descriptive term.'" *Vision Center*, 596 F.2d at 118 (quoting 3 R. Callman, *supra*, Sec. 77.3, at 359).

This threshold has long since been established and by many courts. "Proof of secondary meaning entails vigorous evidentiary requirements." *Perini Corp. v. Perini Construction*, 915 F.2d 121, 125 (4th Cir.1990) (quoting *Thompson Medical Co. v. Pfizer Inc.*, 753 F.2d 208, 217 (2d Cir.1985)); see *Bank of Texas v. Commerce Southwest, Inc.*, 741 F.2d 785, 787 (5th Cir.1984).

The courts have ruled that there are multiple factors that must all be overcome in order to establish secondary meaning. These factors have been addressed specifically and in detail as the courts have found that "the evidentiary burden necessary to establish secondary meaning ... is substantial." *Zatarains, Inc. v. Oak Grove Smokehouse, Inc.*, 698 F.2d 786, 794 (5th Cir.1983); see also *Vision Center v. Opticks, Inc.*, 596 F.2d 111, 118 (5th Cir.1979), cert. denied, 444 U.S. 1016, 100 S.Ct. 668, 62 L.Ed.2d 646 (1980). In determining whether a name has acquired secondary meaning, it is proper to consider the length and manner of use of the name, the nature and extent of advertising and promotion of the name, *Volkswagenwerk Aktiengesellschaft v. Rickard*, 492 F.2d 474, 478 (5th Cir.1974), survey evidence, *Zatarains, Inc. v. Oak Grove Smokehouse, Inc.*, 698 F.2d 786, 795 (5th Cir.1983), the volume of sales, and instances of actual confusion, *American Scientific Chemical, Inc. v. American Hospital Supply Corp.*, 690 F.2d 791, 793 (9th Cir.1982).

In *AMERICAN SCIENTIFIC CHEMICAL, INC., v. AMERICAN HOSPITAL SUPPLY CORP.* No. 81-3282. United States Court of Appeals Ninth Circuit.1982 690 F.2d 791 216 U.S.P.Q. 1080 the court found that: "Although there are numerous cases determining secondary meaning, there is no consensus on its elements. In *Carter-Wallace*, the court asked simply if the mark denotes 'a single thing coming from a single source', 434 F.2d at 802.

Here, the district court looked to 1 *McCarthy, Trademarks and Unfair Competition*, §§ 15:10-15:21, and cited ten forms of evidence of secondary meaning. It said:

"Diverse types of evidence have been considered by courts in determining whether a mark has acquired a secondary meaning. The evidence may include customer surveys, customer testimony, the use of the mark in trade journals, the size of the company, number of sales, the amount, nature and geographical scope of advertising, the period of time during which the mark has been used, the number of customers, and actual confusion.

"To determine whether a mark has developed a secondary meaning, this Court evaluates the following seven factors: '1. direct consumer testimony; 2. consumer surveys; 3. exclusivity, length, and manner of use; 4. amount and manner of advertising; 5. amount of sales and number of customers; 6. established place in the market; and 7. proof of intentional copying.'" *Herman Miller, Inc. v. Palazzetti Imports and Exports, Inc.*, 270 F.3d 298, 311-12 (6th Cir. 2001). Quoted in *Papa Ads, LLC v. Gatehouse Media, Inc.*, (6th Cir. 2012).

Applicant has failed to demonstrate and prove that they have successfully shown secondary meaning in the eyes of the court using any of the seven factors listed above. Accordingly, the mark as applied for should not receive registration.

In *B & J Enterprises LTD v Ken Giordano*, 08-1375 (4th Cir. USCA 2009) the court extensively addressed the threshold of secondary meaning. It wrote:

“Secondary meaning is generally accepted as “the consuming public’s understanding that the mark, when used in context, refers, not to what the descriptive word ordinarily describes, but to the particular business that the mark is meant to identify.” *Perini Corp. v. Perini Const., Inc.*, 915 F.2d 121, 125 (4th Cir. 1990). Furthermore, a trademark infringement plaintiff must show that its descriptive mark acquired such secondary meaning (1) in the defendant’s trade area, and (2) prior to the time the defendant entered the market. See *id.* at 125-26.

“In our *Perini* decision, we identified and spelled out six factors that are relevant to the resolution of the secondary meaning issue. See 915 F.2d at 125. Each of these factors should be assessed in a secondary meaning analysis: (1) plaintiff’s advertising expenditures; (2) consumer studies linking the mark to a source; (3) the plaintiff’s record of sales success; (4) unsolicited media coverage of the plaintiff’s business; (5) attempts to plagiarize the mark; and (6) the length and exclusivity of the plaintiff’s use of the mark. See *id.*; see also *U.S. Search, LLC*, 300 F.3d at 525.

“A trademark plaintiff, seeking to establish secondary meaning, faces a ‘rigorous evidentiary standard.’ *U.S. Search, LLC*, 300 F.3d at 525. And, although a secondary meaning issue is generally for the trier of fact, when the plaintiff’s evidence is sufficiently lacking, a trial court is entitled to conclude on summary judgment that its mark lacks secondary meaning. See *id.* at 525-26. In order to so rule, however, the court must view the facts in the light most favorable to the nonmoving party, and then reasonably conclude that a jury could not find for the plaintiff. See *id.* at 522, 525-26. As we have explained, if a plaintiff ‘cannot clear the [secondary meaning] hurdle; that is, it cannot show that its mark . . . is entitled to service mark protection,’ an award of summary judgment to the defendant is warranted. See *id.* at 523.

Applicant has failed to meet its burden of proof to establish secondary meaning as clearly defined by the courts.

a. Survey

Applicant is well aware of the standard required to show secondary meaning. Despite this, there was absolutely no attempt to introduce survey evidence .

The significance of survey evidence has a long history with the courts. “The importance of qualified survey evidence in establishing secondary meaning is well recognized.” See, e.g., *Holiday Inns, Inc. v. Holiday Out in America*, 5 Cir., 1973, 481 F.2d 445, 447; *Standard Oil Co. v. Standard Oil Co.*, 10 Cir., 1958, 252 F.2d 65, 75; *Zippo Mfg. Co. v. Rogers Imports, Inc.*, S.D.N.Y., 1963, 216 F.Supp. 670, 682-686.

This was again confirmed when the courts wrote "The authorities are in agreement that survey evidence is the most direct and persuasive way of establishing secondary meaning." *Zatarains*, 698 F.2d at 795 508 F.2d 804 185 U.S.P.Q. 65 *THE PRESIDENT AND TRUSTEES OF COLBY COLLEGE, Plaintiff-Appellant, v. COLBY COLLEGE-NEW HAMPSHIRE, Defendant-Appellee*. No. 74-1178. United States Court of Appeals, First Circuit. 1975.

This was further established in the courts when they found that “Survey evidence has become a well-recognized means of establishing secondary meaning.” See *President and Trustees of Colby College*, 508 F.2d at 809; *PaperCutter, Inc. v. Fay's Drug Co., Inc.*, 900 F.2d 558, 564 (2d Cir.1990). “In fact, consumer surveys and testimony are the only direct evidence on this question.” See *International Kennel Club v. Mighty Star, Inc.*, 846 F.2d 1079, 1085 (7th Cir.1988).

Clearly the courts recognize that the single most important piece of evidence has been ignored by the applicant. The courts have found that failure to introduce survey evidence is very telling and has used this in their decisions not to accept that secondary meaning exists. *Braun Inc v Dynamics Corp of America*. 975 F.2d 815, 827 24 USPQ2d 1121, 1131 Fed Cir, 1992 “Braun proffered no surveys, quantitative evidence, or testimony.”

b. Customer Declarations

Applicant, in his filings, states that he works with Greek Orthodox Churches and Greek Orthodox Festivals in the United States. He claims that he attends festivals and sells his merchandise, which includes merchandise with the “GOT OUZO?” mark.

There are currently approximately 550 Greek Orthodox Churches and approximately 400 Greek Festivals (annually) in the United States. A complete list of all churches is found on the official website of the Greek Orthodox Archdiocese of America (www.GOARCH.org). (Applicant introduced this list in his civil action). These are held in virtually every city and in every state in the country. Attendance at these Greek Festivals varies from a few thousand at some to over one hundred thousand at others. Collectively, virtually the entire population of the United States would be the potential customer base for applicant.

In an attempt to try and show secondary meaning, applicant introduces only three declarations by alleged customers, Charles Pappas, Michelle Zois, and Georgia Carlson. Unfortunately, rather than serving to establish facts or credibility the mere existence of these declarations raises more questions of doubt than they offer any answers.

A review of the declarations shows that they are identical in their verbiage. Upon review it would seem they were apparently written for each party by a single party, such as the applicant and clearly were not in their own words. One reason this is known is that Charles Pappas swears by the laws of the State of Florida that he is not committing perjury despite the fact that he affirms that he is a resident of the State of Texas. Clearly, this declaration must be taken as less than accurate, and as such should be discarded and not considered to support applicant's claims.

Further, at least two of the three declarations are from biased parties. Both Charles Pappas and Michele Zois previously supplied declarations on behalf of applicant for his civil action.

The courts have ruled extensively on the significance of both biased and limited declarations in support of secondary meaning as shown in the writings of the courts as follows.

"Proof of distinctiveness requires more than proof of the existence of a relatively small number of people who associate a mark with the applicant." *In re The Paint Products Co.*, 8 USPQ2d 1863, 1866 (TTAB 1988).

"Because these affidavits were sought and collected by applicant from ten customers who have dealt with applicant for many years, the evidence is not altogether persuasive on the issue of how the average customer for paints perceives the words 'PAINT PRODUCTS CO.' in conjunction with paints and coatings.") T.M.E.P. § 1212.06. *In re Gray Inc.*, 3 USPQ2d 1558, 1560 (TTAB 1987) (affidavit of applicant's counsel expressing his belief that the mark has acquired secondary meaning accorded "no probative value whatsoever" because, among other reasons, the statement is subject to bias) T.M.E.P. § 1212.06.

Applicant did not submit as evidence a survey but merely having three declarations, albeit biased, shows such a small number as to itself be significant in how miniscule it is. Courts have weighed in on this as well.

The courts have even decided as to what percentage of a potential client base is significant to determine meaning or, more importantly, what percentage is insignificant to determine secondary meaning. By offering no survey evidence, and declarations, albeit biased, from only three festivals, applicant has offered evidence representing approximately only .003 per cent of his admitted potential client base. In the alternative, that the applicant only offers items with the mark as applied for to Greek Festivals, the evidence provided in support of his applications in the form of these declarations changes to .0075 per cent.

Even if the larger percentage number is accepted as evidence supplied by the applicant, it falls well short of the threshold established by the courts to determine secondary meaning as shown in *SPRAYING SYSTEMS COMPANY, v. DELAVAN, INCORPORATED*, No. 91-1919. United States Court of Appeals, Seventh Circuit. 975 F.2d 387 24 U.S.P.Q.2d 1181 (1992) *Monsieur Henri Wines Ltd. v. Duran*, 204 U.S.P.Q. 601, 605 (TTAB 1979), in which a 37-percent figure was found probative of secondary meaning. The district court's point remains valid. While a 50-percent figure is regarded as clearly sufficient to establish secondary meaning, a figure in the thirties can only be considered marginal. See 2 McCarthy § 32:54, at 786. "Even assuming that appellant's reading of the survey results is the correct one, a positive response rate of 36% is hardly overwhelming." See generally Callmann, *supra*, Sec. 19.27.50 at 205.

c. Lack of Distinctiveness

Applicant, through their own filings, has shown that their use of "GOT OUZO?" lacks distinctiveness of use. They cite their civil action which shows that the case resulted in a Final Order of Default Judgment only in December, 2009. Not only does that show that there was at least one other entity with the mark "GOT OUZO?" a review of the evidence submitted in that case shows that a list was introduced of approximately thirty-eight companies who sold merchandise with the mark "GOT OUZO?".

By the failure of Plaintiff to police the mark in question such broad use of the mark has caused the mark to lose significance as an indication of source, and consequently, cannot have distinctiveness for the plaintiff. This was clarified in *Stuart Spector Designs, Ltd. V. Fender Musical Instruments Corp.*, 94 USPQ2d 1549 (TTAB 2009) which based as the foundation of its ruling

Trademark Act §45,15 U.S.C. §1127. This further supported the ruling in Ballet Tech Foundation, Inc. v The Joyce Theater Foundation, Inc. 89 USPQ28.

The courts have repeatedly established the threshold for what is required to obtain secondary meaning. In Windmill Corp v. Kelly Foods Corp 76 F.3d 380 United States Court of Appeals, Sixth Circuit. 1996 the court writes:

"To acquire a secondary meaning in the minds of the buying public, an article of merchandise when shown to a prospective customer must prompt the affirmation, 'That is the article I want because I know its source,' and not the negative inquiry as to 'Who makes that article?' In other words, the article must proclaim its identification with its source, and not simply stimulate inquiry about it." Roberts, 944 F.2d at 1239.

This is an old and long held opinion. In assessing a claim of secondary meaning, the major inquiry is the consumer's attitude toward the mark. The mark must denote to the consumer "a single thing coming from a single source," Coca-Cola Co. v. Koke Co., 254 U.S. 143, 146, 41 S.Ct. 113, 114, 65 L.Ed. 189 (1920).

In SNO-WIZARD MANUFACTURING, INC., v. EISEMANN PRODUCTS COMPANY, et al., No. 84-3755. United States Court of Appeals Fifth Circuit. 1986 791 F.2d 423 230 U.S.P.Q. 118 the court affirmed that: "the prime element of secondary meaning is 'a mental association in buyers' minds between the alleged mark and a single source of the product.'" Sicilia Di R. Biebow & Co. v. Cox, 732 F.2d 417, 425 (5th Cir.1984).

This continues a long history of similar opinions, as shown in AMERICAN FOOTWEAR CORPORATION, v. GENERAL FOOTWEAR COMPANY LIMITED, , and Universal City Studios, Inc., No. 505, Docket 78-7362. United States Court of Appeals Second Circuit. 1979 609 F.2d 655 204 U.S.P.Q. 609 in which the court echoed that:

"The doctrine of secondary meaning requires not only that the mark have a subordinate meaning, but also that the Primary significance of the mark in the minds of the consumers is the identification of the producer, not a designation of the product. See Kellogg Co. v. National Biscuit Co., 305 U.S. 111, 59 S.Ct. 109, 83 L.Ed. 73 (1938); Spang v. Watson, 92 U.S.App.D.C. 266, 205 F.2d 703 (D.C. Cir.), Cert. denied, 346 U.S. 938, 74 S.Ct. 378, 98 L.Ed. 426 (1954); Blisscraft of Hollywood v. United Plastic Co., 189 F.Supp. 333 (S.D.N.Y.1960), Aff'd in part, rev'd in part on other grounds, 294 F.2d 694 (1961).

This case further reaffirmed earlier cases as shown in *BANK OF TEXAS, v COMMERCE SOUTHWEST, INC. et al.*, No. 83-1388. United States Court of Appeals, Fifth Circuit. 741 F.2d 785 223 U.S.P.Q. 1174 where the court cited the United States Supreme Court:

“In order to establish secondary meaning for a term, a plaintiff must show that the primary significance of the term in the mind of the consuming public is not the product but the producer.” *Kellogg Co. v. National Biscuit Co.*, 305 U.S. 111, 118, 59 S.Ct. 109, 113, 83 L.Ed. 73 (1938).

It is obvious that the requirements for secondary meaning of a trademark have been firmly established and courts have not wavered from these requirements. A long history and pattern of judicial rulings from all courts support each other and these requirements, as shown below.

“A name has acquired secondary meaning when the primary significance of the term in the minds of the consuming public is not the product but the producer.” *Welding Servs.*, 509 F.3d at 1358 (internal quotation and citation omitted). Quoted in *Dan Tana v. Dantanna's*, (11th Cir. 2010).

“In considering a claim of acquired distinctiveness, the issue is whether acquired distinctiveness of the mark in relation to the goods or services has in fact been established in the minds of the purchasing public, not whether the mark is capable of becoming distinctive.” In re *Redken Laboratories, Inc.*, 170 USPQ 526 (TTAB 1971); In re *Fleet-Wing Corp.*, 122 USPQ 335 (TTAB 1959). T.M.E.P. § 1212.06

In re *Packaging Specialists, Inc.*, 221 USPQ 917, 920 (TTAB 1984) (evidence submitted by applicant held insufficient to establish acquired distinctiveness of *PACKAGING SPECIALISTS, INC.*, for contract packaging services, notwithstanding, inter alia, continuous and substantially exclusive use for sixteen years, deemed "a substantial period but not necessarily conclusive or persuasive"). T.M.E.P. § 1212.06

In the matter before the USPTO, however, applicant cannot claim sixteen years of exclusive use. Nor can applicant claim even sixteen months of exclusive use. A present day search online for manufacturers and sellers of “GOT OUZO?” merchandise shows that applicant is still not the only user. Consequently, applicant cannot show that there is a firmly established opinion in the marketplace between products with the mark as applied for and the applicant as the source of the mark in question.

This lack of exclusive use voids applicant's claim of distinctiveness as established long ago by the courts when they wrote that "Secondary meaning is established in a number of ways. First, from the admitted fact of long and exclusive use." See *Norm Thompson Outfitters, Inc. v. General Motors Corp.*, 9 Cir., 1971, 448 F.2d 1293, 1296; *G. & C. Merriam Co. v. Saalfeld*, ante, 198 F. at 373.

As such, oppose shows that the applications before the USPTO in this matter should be terminated. "In most oppositions to registrations under Section 2(f), prevailing opposers have presented some evidence that the mark has not acquired distinctiveness, such as others' use of the proposed mark or similar marks". *Levi Strauss*, 742 F.2d at 1402, 222 USPQ at 940; *Quaker State Oil Refining Corp. v. Quaker Oil Corp.*, 453 F.2d 1296, 1298-99, 172 USPQ 361, 362-63, 59 CCPA 764 (1972); *Roselux*, 299 F.2d at 861, 132 USPQ at 632-33. Further cited in *Cf. Hunter Publishing Co. v. Caulfield Publishing Ltd.*, 1 USPQ2d 1996, 1998-99 (TTAB 1986)

d. Limited advertising

Applicant claims in his pleadings in support of his application that the entire extent of his advertising is the mailing of 250-300 catalogues.

He further claims that this represents his mailings to "every Greek Orthodox Church and Greek Festival in the United States." Based on the list of Greek Orthodox Churches applicant provided in his civil action one can see that this is, in fact, not the case. Applicant also affirms that he mails this catalogue on a regular basis to all Greek Orthodox Churches and Greek Festivals. A review of the catalogue he submits as his evidence shows that it lists the address of applicant as Stafford, Texas. A detailed review of the evidence applicant has submitted shows that applicant has not been located at this address for more than ten years. Consequently, it can be concluded that applicant has not mailed the catalogue in the past ten years, despite his sworn oath to the USPTO TTAB.

Further, applicant does not offer any evidence of any other type of advertising. What he does show indicates a minimal amount of advertising, and he offers no evidence in support of how effective, in any, this minimal advertising is.

This is significant because the courts have found that "The crucial question in a case involving 'secondary meaning' always is whether the public is moved in any degree to buy an article because of its source. See *Wyatt Earp Enterprises, Inc. v. Sackman, Inc.*, supra.

If anything, applicant's advertising claims raise questions. In this attempt to establish secondary meaning applicant claims to mail this number of catalogues annually. In his testimony in his civil action, applicant only claims to have mailed his catalogue once.

Further, applicant previously introduced a list indicating that the actual number of Greek Orthodox Churches in the United States consists of more than 250-300 churches. The actual number, according to the information submitted by applicant is more than 550 Greek Orthodox Churches. Applicant also claims to send catalogues to "every" Greek Orthodox Church. One is left to question why doesn't the applicant claim that the number of catalogues mailed is consistent with the actual number of Greek Orthodox Churches? If the statement of the applicant is factual, these numbers should be consistent.

Clearly, by review of his own evidence in this matter, applicant does not have a significant advertising campaign as it relates to establishing secondary meaning. Even if he did attempt to claim otherwise, it is not known if this higher level of advertising would be a level required merely for the applicant's business to exist due to competitiveness in the marketplace. In *Campbell Sales Group, Inc. v. Gramercy Park Design, LLC*, Case No. 1:10cv55 (M.D.N.C. Oct. 6, 2010) the court addressed this by finding:

"While Campbell offered evidence of substantial advertising expenditures, the court found the evidence insufficient for two reasons. First, adopting language from an older Sixth Circuit decision, the court proclaimed that advertising expenditures cannot be used to establish secondary meaning 'when required merely to survive in a competitive market.'"

e. Lack of sales invoices

Applicant attempts to show sales information for merchandise with "GOT OUZO?" by offering unsubstantiated figures offered from the direct principal of Thanco Products and Imports, Inc.

These figures, if to be considered, must be accepted on blind faith. There is no detailed explanation of these sales figures as normally required by the courts in order for them to have meaning. Numbers alone are useless toward establishing secondary meaning as shown in *Campbell Sales Group, Inc. v. Gramercy Park Design, LLC*, Case No. 1:10cv55 (M.D.N.C. Oct. 6, 2010). In this case, the court also discounted Campbell's evidence of sales revenues for failure to include information as to how the figures compared to industry norms, how they compared to sales of other

Leather Italia USA models, or even what portion of Leather Italia USA's total sales those figures constituted.

Applicant does include as exhibits a list of old sales invoices. It is an attempt by the applicant, to show sales of the mark as applied for. This is actually what he swears to the USPTO TTAB. This is merely a ploy and deception of the by the applicant. A review of each invoice shows that none of them include even one mention of the mark as applied for "GOT OUZO?" They fail to show the sale of even one item with the mark as applied for. In actuality, the invoices never mention GOT OUZO? Instead, they only show that the applicant is attempting to fraudulently manipulate the prosecution of this application.

2. Fraud

Applicant is unable to submit actual evidence in order to try and show secondary meaning for the mark in question. In order to overcome this shortfall, applicant has created its own evidence, blatantly offered misrepresentations of truth and fact, and even conspired with others in an attempt to commit a fraud on the United States Government in order to have its applications for trademarks succeed. As the courts have found, when there exists fraud by a company in its trademark prosecutions, the application(s) should be immediately terminated. *In re Bose Corp.*, 580 F.3d 1240 91 USPQ2d 1938 (Fed. Cir. 2009).

As seen in the following specific examples, the applicant has shown a willful intent to deceive in its prosecution of the application for registration as required by *Smith Int'l, Inc. v Olin Corp*, 209 USPQ 1033, 1044 (TTAB 1981). Consequently, the application for registration should be immediately terminated.

a. Catalogue

Applicant attempts to deceive the United States Patent and Trademark Office by claiming that a copy of his sales catalogue is sent "to every single Greek Orthodox Church in the United States, and to the sponsors of every single Greek festival across the country." He further claims that this catalogue "reaches approximately 250-300 targeted recipients."

A review of the very list of Greek Orthodox Churches that applicant provided to the court in his civil action shows nearly 550 Greek Orthodox Churches. This does not include any of the nearly 400 Greek Festivals in the United States.

Clearly, 250-300 catalogues doesn't come anywhere near the total needed to be able to be sent "to every single Greek Orthodox Church in the United States, and to the sponsors of every single Greek festival across the country."

Applicant also claims that there are festivals in "virtually every state in the country." (Drimalas declaration). There are, in actuality, festivals in every state in the country and have been since at least 2006.

Further, applicant claims that the business is located in Alvin, Texas (Drimalas declaration). A review of the catalogue submitted by applicant as evidence, however, lists an address in Stafford, Texas. A further review of the sales invoices also submitted by the applicant shows that the last dated invoice that used the address in Stafford, Texas is July, 26, 2001. Subsequent to that date all other invoices show an address in Alvin, Texas.

If, as claimed, the applicant mails a catalogue annually it would be only natural to presume that it would contain current information. Based on the information furnished by the applicant himself, the only conclusion is that the applicant is attempting to mislead the USPTO as to the truth concerning this catalogue and it was mailed in 2001 at the latest and not annually since, as applicant claims.

Since applicant is not able to show either a significant or effective advertising campaign he has instead tried to rely on fraud to try and obtain secondary meaning.

b. Sales invoices

Applicant, as one of the requirements to achieve secondary meaning, must try to show that there enough sales and customers to pass the test of the United States Patent and Trademark Office. This is one of the benchmarks as established by the courts.

Unfortunately, applicant is unable to meet this threshold. As a result, applicant has attempted to commit another fraud by including a list of old sales invoices. These sales invoices are used in the hope that they will trick the United States Patent and Trademark Office into thinking that these are customers who have purchased merchandise with the mark “GOT OUZO?”

The applicant has supplied a list of old sales invoices as a part of its response to attempt to overcome the refusal in the USPTO office action. Each invoice lists certain items purchased by various customers. A clear reading of each invoice however shows that not one of them shows a sale of any item that contains the mark as applied for “GOT OUZO?” They show other items and they show sales of generic “ouzo” items but the evidence the applicant himself provides to the USPTO fails to achieve the benchmark required. To make the leap from items that are generically labeled “ouzo” to the mark as applied for “GOT OUZO” requires the USPTO to ignore the true facts contained in the evidence and establish a dangerous precedent.

c. Declarations

Applicant has also included in his response to the Office Action of the United States Patent and Trademark Office three additional declarations. One declaration is from Spirithula Kostakis of Hellinis Imports, a second is from Thanasis Vergos of GKE Corporation, and a third from Nikolaos Renesis of Eclectics LLC.

Each of these declarations is identical to the other in its wording, as they were provided by the applicant, which confirms his involvement and culpability. In each declaration the declarant states, under penalty of perjury:

“Because I have witnessed Thanco offering GOT OUZO? merchandise for more than a decade, I associate the GOT OUZO? trademark with Thanco. I am not aware of any other individual or entity offering merchandise under the GOT OUZO? trademark. When I see GOT OUZO? merchandise for sale at Greek festivals, I believe Thanco to be the source of that merchandise.” (paragraph 4)

These declarations appear to establish a link between the mark “GOT OUZO?” and the applicant as the source of this merchandise, another benchmark that the applicant is required to overcome.

Unfortunately, these three declarations cannot be taken as legitimate and truthful. These declarations, in fact, are the result of a conspiracy to commit fraud against the United States Government and, more specifically, the United States Patent and Trademark Office.

Spirithula Kostakis and Hellinis Imports work with Greek Festivals, as stated in their declaration. They sell Greek themed souvenir type items as well as articles of clothing. Further, until at least 2008 or possibly later, they sold their own merchandise with the mark "GOT OUZO?"

Hellinis Imports and Spirithula Kostakis received a Cease and Desist letter regarding their sales of "GOT OUZO?" merchandise. This letter was not sent by the applicant as an attempt to enforce any rights it claimed in the mark as applied for but from a third party who also had an interest in the same mark.

Hellinis Imports acknowledged this Cease and Desist letter and agreed to no longer sell any merchandise with the mark as applied for "GOT OUZO?"

Despite the fact that Hellinis Imports and Spirithula Kostakis themselves sold merchandise with "GOT OUZO?" they entered into a relationship with the applicant to submit to the United States Patent and Trademark Office this declaration in an attempt to mislead the USPTO about the strength of applicant's mark.

The other two declarations, from Thanasis Vergos of GKE Corporation and from Nikolaos Renesis of Eclectics, LLC, also state that they sell merchandise at Greek Festivals as does Hellinis Imports. These two companies also state the same time period as Hellinis Imports, more than one decade.

Both Thanasis Vergos/GKE Corporation and Nikolaos Renesis/Eclectics, LLC have attended the same Greek Festivals as Spirithula Kostakis and Hellinis Imports and are aware of the sales of merchandise by Spirithula Kostakis and Hellinis Imports with the mark GOT OUZO? during the period 2001 until 2008.

Further, Nikolaos Renesis of Eclectics, LLC, swore in his declaration that he has observed the sales of items with the mark as applied for GOT OUZO? by applicant since 2001 yet records from the State of Florida indicate that Eclectics, LLC was not founded until 2002 and, consequently, could not possibly have seen sales by applicant in 2001.

It appears upon simple review that there is a conspiracy to commit fraud in order to try and show to the United States Patent and Trademark Office that these three companies have no other knowledge of entities selling “GOT OUZO?” merchandise other than the applicant.

3. “OUZO” cannot be trademarked

Applicant, in his response to the office action of the USPTO, includes a declaration by Naomi Jane Gray of the law firm Harvey Siskind, LLP. This is the firm representing the applicant in his prosecution of the mark in question. In that declaration it annexes as Exhibit A a copy of an article posted on Wikipedia regarding Ouzo captured and printed on November 28, 2012.

That article, as submitted by applicant, shows that Ouzo is the traditional drink of Greece. It is, in fact, a national symbol of Greece, known worldwide, as also confirmed by the article submitted by the applicant.

Further, the article states that:

“on October 25, 2006 Greece won the right to label ouzo as an exclusively Greek product. The European Union now recognizes ouzo, as well as the Greek drinks tsipouro and tsikoudia, as products with a Protected Designation of Origin, which prohibits European makers other than Greece and Cyprus from using the name.”

In the application for the mark as applied for, GOT OUZO?, applicant has made no statement that there is no claim to the exclusive right to the word OUZO apart from the mark as shown. The word OUZO, as it is included in the application for the mark, is the same as one of the national symbols of Greece.

If applicant is allowed the mark as applied for, it would be identified by any and all persons without mistake or confusion as meaning Ouzo, the national symbol of Greece, as confirmed by the European Union, and confirmed by applicant himself. Further, due to the ruling of the European Union, the word and the product Ouzo is unique to Greece and unmistakable worldwide as Greek and an alcoholic product of Greece.

Applicant is not an official or unofficial agency or division of the Republic of Greece. Nor is its actions and business enterprise sanctioned by the Republic of Greece. There is absolutely no connection between applicant and the Republic of Greece and absolutely no connection between the Republic of Greece and any item with the mark as applied for GOT OUZO?

The exclusive product of Greece Ouzo has been produced for thousands of years and is known worldwide. Persons who have not even consumed the product Ouzo are familiar with this product and automatically associate Ouzo with the Republic of Greece. The use of the mark as applied for on any item would automatically associate that item with the Republic of Greece. Further, as applicant has already admitted that his sole business is to work with Greek Orthodox Churches and Greek Festivals only further reinforces the automatic connection between the product Ouzo and the Republic of Greece.

The Trademark Act, 15 U.S.C. 1052(a) specifically states that a mark as applied for cannot be registered if it:

“Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute.”

Ouzo is a national symbol of Greece and is barred from registration under Lanham Act Section 2(f), 15 U.S.C. 1052(f)) which specifically prohibits registration of a mark that “falsely suggests a connection with persons, living or dead, institutions, beliefs or national symbols.” even if secondary meaning is shown.

4. CONCLUSION

The applicant has failed to overcome the threshold for establishing secondary meaning on each and every factor established and upheld by the courts required to show secondary meaning. Merely by failing to do so the mark as applied for should not receive trademark registration.

Further, when the applicant was unable to provide valid evidence to support their position, they willfully attempted to deceive the USPTO by creating or manipulating evidence. This act alone should immediately cancel applicant’s attempt at registration of the mark as applied for as previously stated by the courts.

Applicant has also undertaken a complex plan to deceive the USPTO and commit fraud in an attempt to obtain registration for the mark as applied for. Not only has applicant committed fraud against the United States government through the United States Patent and Trademark Office, he has engaged others in a conspiracy to obtain registration. This should immediately cancel applicant's pending applications before the USPTO.

OUZO, as determined by the Congress of the European Union, is a protected word and, as such the mark as applied for cannot receive trademark registration according to the rules and regulations of the USPTO. As such, the pending applications by applicant should be terminated.

We ask that the USPTO immediately terminate this application for the mark as applied for.

CERTIFICATE OF SERVICE

The undersigned, Chris Economides III , does swear and affirm that a true and correct copy of the foregoing Notice Objection was served upon the plaintiff, Thanco Products and Imports, Inc. through his attorney by forwarding said copy, on November 22, 2013 via the United States Postal Service with sufficient postage to have them delivered to the address below:

D. PETER HARVEY
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/Chris Economides III/
Chris Economides III

November 22, 2013